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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 PATRICIA S. HAWTHORNE, individually
10 and as assignee of Oklahoma Court Services,
11 Inc.,

12 Plaintiff,

13 v.

14 MID-CONTINENT CASUALTY
15 COMPANY, OKLAHOMA SURETY
16 COMPANY, an Oklahoma Insurance
Company,

17 Defendant.

Case No. C16-1948RSL

ORDER DENYING DEFENDANT'S
MOTION TO CERTIFY FOR
INTERLOCUTORY APPEAL AND
TO STAY LITIGATION

18 This matter comes before the Court on defendant Oklahoma Surety Company's "Motion
19 to Certify Interlocutory Appeal and to Stay Litigation." Dkt. # 57. Having considered the
20 parties' briefing and the remainder of the record, the Court denies the motion for the reasons that
follow.

21 In November 2016, acting in her individual capacity and as assignee of various insurance
22 claims by Oklahoma Court Services, Inc. ("OCS"), plaintiff filed this action in King County
23 Superior Court against OCS's insurer, Oklahoma Surety Company ("Oklahoma Surety"), for bad
24 faith, violation of Washington's Unfair Trade Practices Act, and breach of the contractual duties
25 to defend, settle, and indemnify. Dkt. # 1-1. On December 21, 2016, Oklahoma Surety removed
26 this case to federal court, Dkt. # 1, and shortly thereafter moved to dismiss the case for lack of

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1 personal jurisdiction, Dkt. # 9. The Court denied that motion on April 4, 2017. Dkt. # 39.

2 On April 20, 2017, plaintiff moved for leave to file a second amended complaint,
3 specifically to add a claim under Washington's Insurance Fair Conduct Act (IFCA) because the
4 required 20 days had elapsed since plaintiff submitted notices to the Washington Insurance
5 Commissioner and to Oklahoma Surety and Mid-Continent Casualty Company, as required by
6 RCW 48.030.015(8)(a). Dkt. # 44. Oklahoma Surety opposed plaintiff's motion, arguing that
7 Oklahoma law applies in this case rather than Washington law, but that an IFCA claim would be
8 futile in any event. Dkt. # 52.

9 On May 4, 2017, just three days after filing its response to plaintiff's motion for leave to
10 amend, Oklahoma Surety moved for partial summary judgment on the question of choice of law
11 and on all claims brought in plaintiff's individual capacity. Dkt. # 54. As in its opposition to
12 plaintiff's motion for leave to amend, Oklahoma Surety argues that Oklahoma law applies to all
13 of plaintiff's claims. Oklahoma Surety also asks the Court to dismiss the claims that plaintiff has
14 brought "individually," as opposed to as assignee of OCS.

15 The very next day, Oklahoma Surety moved to certify for interlocutory appeal this
16 Court's order holding that it could exercise specific personal jurisdiction over Oklahoma Surety
17 in this case, and to stay this litigation pending resolution of that appeal. Dkt. # 57. Plaintiff
18 opposes certification. Dkt. # 63.

19 Because certification and a stay would preclude resolution of the other pending motions,
20 the Court addresses that issue before resolving the older outstanding motions.

21 Under 28 U.S.C. § 1292(b), in a civil case, a district judge may certify for interlocutory
22 appeal an order that "involves a controlling question of law as to which there is substantial
23 ground for difference of opinion," where "an immediate appeal from the order may materially
24 advance the ultimate termination of the litigation." The court of appeals may then, "in its
25 discretion, permit an appeal to be taken from such order, if application is made to it within ten
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1 days after entry of the order.” Application for an appeal under this provision does not
2 automatically stay proceedings in the district court, though either the district court or the court of
3 appeals may order a stay.

4 As explained above, Oklahoma Surety asks the Court to certify an interlocutory appeal of
5 its order holding that it could exercise personal jurisdiction over Oklahoma Surety in this case.
6 See Dkt. # 39. Specifically, Oklahoma Surety argues that the Court incorrectly concluded that
7 the Ninth Circuit’s decision in Farmers Insurance Exchange v. Portage La Prairie Mutual
8 Insurance Co., 907 F.2d 911(9th Cir. 1990), supports personal jurisdiction here. In Farmers, the
9 Ninth Circuit held that an insurance company that conducted no business in Montana
10 nonetheless “purposefully availed” itself of the Montana forum where (1) the insurer’s policy
11 applied nationwide and (2) “an insured event resulted in litigation” in Montana. Id. at 913–14.
12 Oklahoma Surety asserts that the Court’s erroneous application of Farmers is grounded on its
13 mistaken conclusion that the “insured event” in this case was the assault of plaintiff in
14 Washington, rather than the negligent failure to supervise plaintiff’s assailant, which Oklahoma
15 Surety asserts occurred in Oklahoma.


16 Oklahoma Surety misconstrues Farmers. Whether the “insured event” in this case was
17 OCS’s failure to supervise a probationer or the probationer’s assault of plaintiff, what matters
18 under the Farmers analysis is that both events “resulted in litigation” *in Washington*. 907 F.2d at
19 913. Like the automobile liability insurer in Farmers, Oklahoma Surety “contract[ed] to
20 indemnify and defend [OCS] for claims that [would] foreseeably result in litigation in foreign
21 states.” Id. at 914. And like the insurer in Farmers, Oklahoma Surety “controlled its own
22 amenability to suit.” Id. “Had [Oklahoma Surety] wished to avoid suit in [Washington], it could
23 have excluded that state from the ‘policy territory’ defined in the policy.” Id. (quoting Rossman
24 v. State Farm Mut. Auto. Ins. Co., 832 F.2d 282, 287 (4th Cir. 1987)). Instead, Oklahoma
25 Surety issued a nationwide policy, and an insured event under that policy resulted in litigation in
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1 Washington. Accordingly, under Farmers, Oklahoma Surety purposefully availed itself of this
2 Washington forum. The Court is not persuaded that a reasonable jurist might conclude
3 otherwise.

4 Indeed, Oklahoma Surety's argument for certification boils down to a quarrel with the
5 Farmers rule itself, not with the Court's application of that rule. See Dkt. # 57 at 3 ("[O]ther
6 federal circuits . . . eschew Farmers' mechanical extension of personal jurisdiction to liability
7 insurance cases."); Dkt. # 68 at 3 & n.1 (arguing that "the Ninth Circuit's legal standards
8 themselves do not square with the constitutional principles governing personal jurisdiction," and
9 that "if the Ninth Circuit takes review, it can (and should) properly consider whether to amend
10 its approach in light of other Circuits' approaches"). The Court declines to certify interlocutory
11 appeal on the off chance that the Ninth Circuit will take this opportunity to overrule its own
12 clearly established law.

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14 For all the foregoing reasons, Oklahoma Surety's motion to certify for interlocutory
15 appeal and to stay litigation (Dkt. # 57) is DENIED.

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17 DATED this 30th day of June, 2017.

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20 Robert S. Lasnik
21 United States District Judge
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